

DENNIS M. BROWN, Bar No. 126575
MARYAM S. KARSON, Bar No. 221184
LITTLER MENDELSON
A Professional Corporation
50 West San Fernando Street
15th Floor
San Jose, CA 95113.2303
Telephone: 408.998.4150

Attorneys for Defendants
CLOUDMARK, INC.; KIM MOSS; JAMIE DE
GUERRE; AND MIKE SMITH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES ALAN BUSH,
Plaintiff,

v.

CLOUDMARK, KIM MOSS, TOM DOE
1, MIKE SMITH, JAMIE DE GUERRE,
AND DOES 2 TO 5, INCLUSIVE,
Defendants.

Case No. C08 01272 PVT

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION TO DISMISS, OR IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT**

Date: May 27, 2008
Time: 10:00 a.m.
Courtroom: 5

THE HONORABLE PATRICIA V.
TRUMBULL, MAGISTRATE JUDGE

Pursuant to the Federal Rules of Evidence, Rule 201(b)(2), Defendants Cloudmark, Inc., Kim Moss, Jamie De Guerre, and Mike Smith, hereby respectfully request from this Court to take judicial notice of the following:

1. Defendant Cloudmark, Inc.'s Certificate of Incorporation filed in the state of Delaware on December 10, 2001, a true and correct copy of which is attached as Exhibit "A" to the Declaration of Kimberly Moss;
2. Defendant Cloudmark, Inc.'s Certificate of Qualification issued by former Secretary of State Bill Jones, a true and correct copy of which (including attachments thereto) is attached as Exhibit "B" to the Declaration of Kimberly Moss.
3. The fact that Plaintiff is a Caucasian male.

(NO. C08 01272 PVT)
FIRMWIDE:84638292.1 610000.1230

1 4. The fact that on March 15, 2005, Plaintiff signed a Severance Agreement and
2 Release with respect to any claims he may have against Defendants in connection with his
3 employment at Cloudmark, Inc. A true and correct copy of this Agreement is attached as Exhibit
4 "C" to the Declaration of Kimberly Moss.

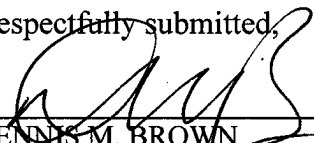
5 This Court has the authority to take judicial notice of the corporate documents set
6 forth in paragraphs 1 and 2 of this Notice because certified public records that are kept by the
7 Secretary of State fall directly into the category of items considered proper for judicial notice by the
8 Court. *Grassmueck v. Barnett*, 281 F. Supp. 2d 1227, 1232 (2003). *Accord, Alberts v. Tuft (In re*
9 *Greater Southeast Cmty. Hosp. Corp.)*, 333 B.R. 506, 527, n. 25 (2005).

10 This Court has the authority to take judicial notice of the fact that Plaintiff is a
11 Caucasian male, because this fact is capable of accurate and ready determination by observing
12 Plaintiff's physical appearance when he appears in person before this Court, by reviewing relevant
13 public records, or by observing Plaintiff on Youtube, at [http://www.youtube.com/watch?v=](http://www.youtube.com/watch?v=YiBaEmTgUi8)
14 [YiBaEmTgUi8](http://www.youtube.com/watch?v=YiBaEmTgUi8).

15 This Court has the authority to take judicial notice of the fact that on March 15, 2005
16 Plaintiff signed the Severance Agreement and Release discussed in paragraph 4 of this Notice,
17 because this fact is capable of accurate and ready determination by comparing Plaintiff's signature
18 on the pleadings filed with this Court, with his signature on the Severance Agreement and Release.
19 See Fed. Rules Evid., Rules 201(b)(2) and 901(b)(2).

20 Dated: April 16, 2008

Respectfully submitted,


21
22 DENNIS M. BROWN
23 MARYAM S. KARSON
24 LITTLER MENDELSON
25 Attorneys for Defendants
26 CLOUDMARK, INC.; KIM MOSS; JAMIE DE
27 GUERRE; AND MIKE SMITH
28